

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

1 IN THE MATTER OF )  
2 TOPSOILS, INC., )  
3 Appellant, )  
4 vs. )  
5 PUGET SOUND AIR POLLUTION )  
6 CONTROL AGENCY, )  
Respondent. )

PCHB No. 484

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

8 THIS MATTER being an appeal of a \$100.00 civil penalty for an alleged  
9 open-burning and burning prohibitive materials violation of respondent's  
10 Regulation I; having come on regularly for hearing before the Pollution  
11 Control Hearings Board on the 4th day of March, 1974, at Seattle,  
12 Washington; and appellant Topsoils, Inc. appearing through the president's  
13 secretary, Mrs. Ollie Morseth and respondent Puget Sound Air Pollution  
14 Control Agency appearing through its attorney, Keith D. McGoffin; and  
15 Board members present at the hearing being Walt Woodward (presiding) and  
16 Mary Ellen McCaffree; and the Board having considered the sworn testimony,  
17 exhibits, records and files herein and having entered on the 3rd day of  
18 April, 1974, its proposed Findings of Fact, Conclusions of Law and Order,

1 and the Board having served said proposed Findings, Conclusions and  
2 Order upon all parties herein by certified mail, return receipt requested  
3 and twenty days having elapsed from said service; and

4 The Board having received no exceptions to said proposed Findings,  
5 Conclusions and Order; and the Board being fully advised in the premises;  
6 now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
8 Findings of Fact, Conclusions of Law and Order, dated the 3rd day of  
9 April, 1974, and incorporated by this reference herein and attached  
10 hereto as Exhibit A, are adopted and hereby entered as the Board's  
11 Final Findings of Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington, this 25<sup>th</sup> day of April, 1974.

3 POLLUTION CONTROL HEARINGS BOARD

14 Walt Woodward  
15 WALT WOODWARD, Chairman

17 Mary Ellen McCaffree  
18 MARY ELLEN McCAFFREE, Member

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26 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
27 AND ORDER

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

THE MATTER OF  
TOPSOILS, INC.,

Appellant,

vs.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 484

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

This matter, the appeal of a \$100.00 civil penalty for an alleged open-burning and burning prohibitive materials violation of respondent's Regulation I, came before two members of the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) at a formal hearing in the Washington Commerce Building, Seattle, Washington at 9:30 a.m. on March 4, 1974. Appellant was represented by Mrs. Ollie Morseth, Secretary to James M. McAuliffe, President, Topsoils, Inc.; respondent appeared through its counsel, Keith D. McGoffin. Richard Reinertsen, Olympia court reporter, recorded the proceedings.

Having heard the testimony and being fully advised, the Board

EXHIBIT A

1 makes the following

2 FINDINGS OF FACT

3 I.

4 On October 11, 1973 at 10:00 a.m., Lt. Darrell K. Frost of  
5 the Bothell Fire Department observed a large cloud of smoke and  
6 an open fire which contained cardboard boxes, creosote logs, bottles,  
7 cans, panel of fiberglass and other debris in the area of Highway 522  
8 off ramp from Interstate 5, on a hillside behind Woodinville Plumbing  
9 and Tractor Company, (hereinafter called the site). Lt. Frost in  
10 conversation with a man standing about 50 yards from the fire was  
11 told that the permit to burn was in the office of Topsoils, Inc.  
12 The permit in the Topsoils office issued by the Bothell Fire  
13 Department on September 19, 1973 had expired on September 21, 1973.  
14 Lt. Frost reported the open-burning fire to the Puget Sound Air  
15 Pollution Control Agency, (hereinafter respondent).

16 II.

17 Section 9.02(b)(3) of respondent's Regulation I makes it unlawful  
18 to any person to cause or allow any outdoor fire, . . . "containing  
19 garbage, dead animals, asphalt, petroleum products, paints, rubber  
20 products, plastics, or any substance other than natural vegetation  
21 which normally emits dense smoke or obnoxious odors; . . ."

22 III.

23 A member of respondent's staff arrived at the site around  
24 11:00 a.m. The fire had been covered with dirt in an attempt to  
25 extinguish it, but was still smoldering. At this time respondent  
26 attempted to issue a citation for violation of its Regulation I to

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

1 James M. McAuliffe, President of Topsoils, Inc. who refused to sign  
2 it or to except any responsibility for the violation.

3 IV.

4 The appellant is the owner of the land at the site, but has leased  
5 the back portion of his property, as described in a lease document  
6 (App. Ex. 2) which became effective on October 1, 1973, to John  
7 Gunderson, Co-Owner, Woodinville Plumbing and Tractor, Inc. It was  
8 on Mr. Gunderson's leased property that the open-burning was discovered.

9 V.

10 Notice of Violation No. 8723 was issued by respondent to the  
11 appellant via certified mail and subsequently Civil Penalty No. 1242  
12 in the amount of \$100.00 was also issued to the appellant. The notice  
13 of civil penalty is the subject of this appeal.

14 VI.

15 Appellant had no knowledge of the fire prior to being informed  
16 by an inspector of the respondent, nor had he contributed to the fire  
17 any of the materials which were burning at the site. It was never  
18 determined exactly how the open-burning fire that precipitated this  
19 penalty was started.

20 VII.

21 Section 9.02(g) of respondent's Regulation I states:

22 "It shall be prima facie evidence that the person  
23 who owns or controls property on which an  
24 outdoor fire occurs has caused or allowed said  
outdoor fire."

25 From which the Board makes the following

26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW,  
AND ORDER

1 CONCLUSIONS OF LAW

2 I.

3 The Board agrees with the appellant's contention that he should  
4 not be given Notice of Violation No. 8723, inasmuch as the open-burning  
5 did not occur on his property, but on that portion of his property  
6 which was under lawful lease to another and thus the appellant had  
7 no control over it.

8 II.

9 Under the above-described circumstances that \$100.00 Civil  
10 Penalty No. 1242, would not apply to the appellant.

11 ORDER

12 The appeal is sustained and the civil penalty be vacated.

13 DATED this 3rd day of April, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15  
16 Walt Woodward  
17 WALT WOODWARD, Chairman

18  
19 Mary Ellen McCaffree  
20 MARY ELLEN McCAFFREE, Member

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26 Findings of Fact,  
27 Conclusions of Law,  
and Order